

13 Official Opinions of the Compliance Board 36 (2019)

- ◆ **2(D) Meeting Notice – Practice Permitted. Publication in local newspaper (No Violation)**
- ◆ **6(B)(3) Minutes –Practice in Violation. Failure to approve minutes without undue delay. (Violation)**
- ◆ **6(B)(3) Minutes –Practice in Violation. Failure to post minutes online as soon as practicable. (Violation)**
- ◆ **Violations: §§ 306(b) and 306(e)**

*Topic numbers and headings correspond to those in the Opinions Index posted on the Open Meetings webpage at www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx

June 18, 2019

Re: Deep Creek Lake Policy & Review Board

The complaint alleges that the Deep Creek Lake Policy and Review Board (“Review Board”) violated the Act because it has not provided advance notice of its meetings during the past year and has not timely adopted or posted minutes of those meetings.¹ The Review Board responded through counsel.

1. Allegation that the Review Board has not given notice of its quarterly meetings during the past year.

The Review Board typically meets quarterly and, in the past year, held meetings in January and April, 2019, and July and October, 2018. The complaint alleges that the Review Board did not provide advance public notice of any of those meetings, and, in support of its allegation, points to the absence of such notice on the Review Board’s website. The Review Board responds that, at least two weeks before each meeting, it emailed meeting notices to the local newspaper—the *Garrett County Republican*—which in turn published the notices in the weekly “Community Calendar” section. According to the Review Board, the *Garrett County Republican* is the “primary source for reporting on the activities of Garrett County.” The Review Board provided us with a copy of each notice and of the email requests to the newspaper.

The Act requires a public body, before meeting in a closed or open session, to “give reasonable advance notice.” § 3-302(a).² Notice may be given, among other ways, “by delivery to representatives of the news media who regularly report on sessions of the public body . . .” § 3-302(c)(2). Under the circumstances here, we find that the Review Board has complied with the Act’s notice requirements by advertising its meetings at least two weeks in advance in the local newspaper. However, we

¹ The complaint also asks whether documents discussed during an open meeting must be provided to audience members or appended to meeting minutes. We refer the complainant to Chapter 3 of the Open Meetings Act Manual, which explains that the public’s ability to observe an open meeting “does not mean that the public body must provide to the audience copies of the documents being reviewed by the members.” With the exception of certain meeting-related documents described in Chapter 6 of the Manual, *e.g.* meeting minutes, the Public Information Act, not the Open Meetings Act, governs requests for records. Nonetheless, the public body should “provide an oral summary or general description of the documents in question” in order to give the public “a grasp of what is being discussed and acted upon.” Open Meetings Act Manual, 3-2.

² References are to the General Provisions Article of the Maryland Annotated Code (2014, with 2018 supp.).

encourage the Review Board to review its notice methods to ensure that notice is reaching its interested public. *See* Open Meetings Act Manual 2-5 (suggesting that public bodies “periodically revisit their choice of [notice] methods, because methods that once seemed adequate for a particular constituency might have become ineffective.”); 9 *OMCB Opinions* 206, 209 (2015) (encouraging public bodies to “review their notice methods, to reasonably adapt them to the changing ways in which their interested public gets information, and, if possible, to use several methods”).³

2. *Allegation that the Review Board does not timely adopt meeting minutes or post them online.*

The complaint alleges that the Review Board does not timely adopt meeting minutes and has not posted minutes on its website since October 2017. The Review Board responds that its practice is to formally adopt minutes of each quarterly meeting at the subsequent quarterly meeting, after which the minutes are open to public inspection and posted online. We have no information on whether the Review Board makes draft minutes available before this time. Additionally, although it appears the Review Board has posted additional meeting minutes on its website since the complaint was filed—including the minutes of its January 2019 meeting—the Review Board does not respond to the allegation that it failed to timely post minutes online after October 2017.

In pertinent part, the Act requires a public body to prepare written minutes “as soon as practicable” after a meeting, to open them for inspection, and to post them online “[t]o the extent practicable.” § 3-306(b), (d), and (e). In applying the “as soon as practicable” standard in § 3-306(b), “we look at the practical constraints on the public body responsible for adopting the minutes and also the interest of members of the public in acquiring relatively prompt information about a meeting they could not attend.” 8 *OMCB Opinions* 180, 180-81 (2013). Although this standard allows public bodies a somewhat flexible window of time for adopting minutes, routine delays of several months clearly violate the Act. *See* 7 *OMCB Opinions* 237, 240-41 (2011).

Here, the Review Board’s practice amounts to a routine three-month delay between a meeting and the public’s opportunity to review the minutes of that meeting. We find that practice to be a violation of § 3-306(b). *See* 8 *OMCB Opinions* 125, 126 (2013) (finding that a similar delay violated the Act). We encourage the Review Board to adopt its minutes by circulating them via email so the public may review them well before the next quarterly meeting. *See* 8 *OMCB Opinions* 125, 126 (2013) (advising another public body that met quarterly to adopt that practice). But we reiterate the caveat we gave previously when giving similar advice:

[O]ur encouragement, only to public bodies that meet infrequently, to adopt minutes by e-mail should not be taken either as an encouragement to regularly-meeting public bodies to adopt minutes that way or as our approval of any more general practice of taking actions by email. As we have stated before, the practice of taking actions by e-mail does not serve the goal of the Act that public business be conducted publicly. The

³ It appears the Review Board has begun posting notice of upcoming meetings on its website. The Review Board explains, however, that it has not yet given public notice that this method will be used, as required by § 3-302(c)(3). If website posting is likely to reach the Review Board’s interested public, we encourage it to continue the practice, and to provide public notice in the newspaper of its intention to do so.

distinction between the adoption of minutes by e-mail when a public body meets rarely and any broader use of the practice is simple: the prompt availability of minutes serves the interest of transparency, though at some sacrifice to the ability of the public to observe the public body's discussion of the draft, while the discussion of other issues by e-mail serves no goal of the Act.

Id. at 126-27.

We also find that the Review Board violated § 3-306(e) by not posting minutes online "to the extent practicable." At the time the complaint was filed, the Review Board allegedly had last posted minutes online in October 2017. Although the Review Board has since updated its webpage with additional meeting minutes, the Review Board does not explain why it would not have been practicable to do so earlier. Absent any response to the allegation, it appears to us that the Review Board could have posted the minutes more promptly.

Conclusion

We find that the Review Board violated §§ 3-306(b) and 3-306(e). This opinion is subject to the acknowledgement requirement set forth in § 3-211.

Open Meetings Compliance Board

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